

By: Ellis

S.B. No. 454

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures applicable to waivers of the right to
3 counsel in certain adversary judicial proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 1.051, Code of Criminal Procedure, is
6 amended by amending Subsections (e), (f), (g), and (h) and adding
7 Subsections (f-1) and (f-2) to read as follows:

8 (e) An appointed counsel is entitled to 10 days to prepare
9 for a proceeding but may waive the preparation time with the consent
10 of the defendant in writing or on the record in open court. If a
11 nonindigent defendant [~~or an indigent defendant who has refused~~
12 ~~appointed counsel in order to retain private counsel~~] appears
13 without counsel at a proceeding after having been given a
14 reasonable opportunity to retain counsel, the court, on 10 days'
15 notice to the defendant of a dispositive setting, may proceed with
16 the matter without securing a written waiver or appointing counsel.
17 If an indigent defendant who has refused appointed counsel in order
18 to retain private counsel appears without counsel after having been
19 given an opportunity to retain counsel, the court, after giving the
20 defendant a reasonable opportunity to request appointment of
21 counsel or, if the defendant elects not to request appointment of
22 counsel, after obtaining a waiver of the right to counsel pursuant
23 to Subsections (f) and (g), may proceed with the matter on 10 days'
24 notice to the defendant of a dispositive setting.

1 (f) A defendant may voluntarily and intelligently waive in
2 writing the right to counsel. A waiver obtained following a
3 violation of Subsection (f-1) or (f-2) is presumed invalid.

4 (f-1) In any adversary judicial proceeding that may result
5 in punishment by confinement, the attorney representing the state
6 may not:

7 (1) initiate or encourage an attempt to obtain from a
8 defendant who is not represented by counsel a waiver of the right to
9 counsel; or

10 (2) communicate with a defendant who has requested the
11 appointment of counsel unless the court or the court's designee
12 authorized under Article 26.04 to appoint counsel for indigent
13 defendants in the county has denied the request and, subsequent to
14 the denial, the defendant has been given a reasonable opportunity
15 to retain private counsel.

16 (f-2) In any adversary judicial proceeding that may result
17 in punishment by confinement, the court may not direct or encourage
18 the defendant to communicate with the attorney representing the
19 state until the court advises the defendant of the right to counsel
20 and the procedure for requesting appointed counsel and the
21 defendant has been given a reasonable opportunity to request
22 appointed counsel. If the defendant has requested appointed
23 counsel, the court may not direct or encourage the defendant to
24 communicate with the attorney representing the state unless the
25 court or the court's designee authorized under Article 26.04 to
26 appoint counsel for indigent defendants in the county has denied
27 the request and, subsequent to the denial, the defendant has been

1 given a reasonable opportunity to retain private counsel.

2 (g) If a defendant wishes to waive the [~~his~~] right to
3 counsel, whether for purposes of entering a guilty plea or
4 proceeding to trial, the court shall advise the defendant [~~him~~] of
5 the nature of the charges against the defendant and the dangers and
6 disadvantages of self-representation. If the court determines that
7 the waiver is voluntarily and intelligently made, the court shall
8 provide the defendant with a statement substantially in the
9 following form, which, if signed by the defendant, shall be filed
10 with and become part of the record of the proceedings:

11 "I have been advised this _____ day of
12 _____, 20 [~~19~~] _____, by the (name of court) Court
13 of my right to representation by counsel in the case
14 [~~trial of the charge~~] pending against me. I have been
15 further advised that if I am unable to afford counsel,
16 one will be appointed for me free of charge.
17 Understanding my right to have counsel appointed for
18 me free of charge if I am not financially able to
19 employ counsel, I wish to waive that right and request
20 the court to proceed with my case without an attorney
21 being appointed for me. I hereby waive my right to
22 counsel. (signature of the defendant)"

23 (h) A defendant may withdraw a waiver of the right to
24 counsel at any time, without penalty, but is not entitled to repeat
25 a proceeding previously held or waived solely on the grounds of the
26 subsequent appointment or retention of counsel.

27 SECTION 2. (a) The change in law made by this Act to

1 Section 1.051(e), Code of Criminal Procedure, applies only to a
2 proceeding at which an indigent defendant appears without counsel
3 after having refused appointed counsel if the proceeding occurs on
4 or after the effective date of this Act. A proceeding at which an
5 indigent defendant appears without counsel after having refused
6 appointed counsel that occurs before the effective date of this Act
7 is covered by the law in effect at the time of the proceeding, and
8 the former law is continued in effect for that purpose.

9 (b) The change in law made by this Act to Section 1.051(f),
10 Code of Criminal Procedure, applies only to a waiver of counsel or a
11 communication with a defendant that occurs on or after the
12 effective date of this Act. A waiver of counsel or a communication
13 with a defendant that occurred before the effective date of this Act
14 is covered by the law in effect at the time the waiver or
15 communication occurred, and the former law is continued in effect
16 for that purpose.

17 SECTION 3. This Act takes effect September 1, 2007.